

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA**

**CM/ECF USERS' ADVISORY GROUP**

**MAY 23, 2001, MEETING**

**MINUTES**

A meeting of the CM/ECF Users' Advisory Group (UAG) was held on Wednesday, May 23, 2001. The meeting, which was held via video teleconference at the Court's Alexandria, Norfolk and Richmond facilities, commenced at 1:15 p.m. and concluded at 2:15 p.m. The following persons were in attendance at the meeting: Carmon Escalera (for Robert Weed), Roy Lasris, Frank Santoro, Barry Spear, Charles Krumbein, Peggy Grivetti, Steve Kopacki, Chuck Miller, Renee Paxton, Karin Doggett, Sandra Heagle, Barry Wells, Dick Napoli and Bill Redden.

**Opening Comments and Approval of Minutes from Last UAG Meeting (*Bill Redden*)**

Bill Redden made some opening comments. The minutes from the March 20, 2001, meeting were approved and will be posted to the Court's ECF home page at the Court's Internet web site and transmitted, via e-mail, to registered ECF users. **[Update:** The minutes have been posted and transmitted.]

Bill also noted other matters of interest:

With the anticipated change in party leadership in the Senate resulting from Senator Jefford's (R-VT) intention to leave the Republican Party, become an independent and organize with the Democratic Party, the outcome of the bankruptcy reform bill remains uncertain. **[Update:** Senate Democratic leaders have announced that Senator Biden (D-Del) will be named to serve on the bill's conference committee. The Senate Republican leadership has declined to name its conferees pending a review of all the conferees selected by the Democratic Senate leadership. Senate Majority Leader Daschle (D-S.D.) intends for the Senate to take up the House bankruptcy bill, substitute it with Senate text and go directly to conference. A vote to invoke cloture, on July 12 was successful. Time was set aside on Tuesday, July 17 for three hours of debate in the Senate. Also, on July 17, the Senate voted to invoke cloture on a procedural motion that would allow a conference committee to be convened. The cloture motion passed by an overwhelming margin. The Senate has named conferees. The House is expected to name its conferees during the week of July 23. A veto threat from the White House reportedly is waiting in the wings over the \$125,000 homestead exemption cap.]

Bill noted that Sandra Heagle (as the ACC Team court representative) was attending the meeting and would be providing updates as noted in the agenda.

## **1. Current Status and information of Interest**

### **a. NIBS Conversion Program Update (*Karin Doggett and Barry Wells*)**

Karin Doggett reported on the status of the NIBS conversion utility program. While the AO is continuing to work out bugs and make fixes to the program, it is not expected that the program will be ready for intensive local conversion testing of the court's entire NIBS database until this summer. As noted in earlier UAG meetings, the use and maintenance of two separate case management systems are continuing to place a burden on the clerk's office staff members. **[Update:** Based on local testing that has been completed to date, the clerk's office has determined (and the AO agrees) that upgraded ECF server equipment is required to store converted NIBS data. The Court has been placed high on a priority list for upgraded ECF server equipment, which should be delivered by the AO to the court for installation this fall. In the interim and to avoid deferral of needed program testing, the Delaware Bankruptcy Court, which has a smaller NIBS database, has joined the conversion program testing process.]

### **b. Bankruptcy Noticing Center/Electronic Bankruptcy Noticing (*Bill Redden*)**

Bill noted that the Judges, at their May 21, 2001, meeting, approved the implementation of Electronic Bankruptcy Noticing (EBN) Phase II services through the Bankruptcy Noticing Center (BNC) and for notice recipients to sign up directly with the BNC rather than exclusively through the Court. EBN Phase II will establish a mechanism to expedite the processing of notices by the BNC via either the Internet or facsimile transmission. EBN Phase II complements ECF. Noticing through the BNC's Phase II will be paperless for notice recipients using the e-mail transmission method and will eliminate the delivery time required through the use of the United States Postal Service (USPS). While a notice recipient's use of facsimile transmission will not eliminate a paper notice being received, it too will eliminate the delivery time required through use of the USPS. **[Update:** Standing Order 01-3 has been entered by the Court and can be viewed at the Court ECF home page. The clerk's office is working with the BNC and the AO in implementing EBN Phase II. The clerk's office also is developing a BNC EBN Internet home page. More information on EBN Phase II will be sent to the Bar this summer.]

### **c. WebPACER Electronic Access Fee (*Bill Redden*)**

Bill Redden commented on the Judicial Conference policy concerning the WebPACER electronic access fee. He provided the meeting participants with a draft memorandum on this subject addressed to all CM/ECF registered users and non-registered query-only users. Bill asked that comment be provided to him. The draft memorandum provided: (1) information on the May 8, 2001, notice, which was placed in the *Federal Register* (Vol.66, No.89 at 23228) by the AO;

(2) background information on the congressional mandate and requirement that the judiciary charge fees for access to electronic court data; (3) information on the scheduled July 1, 2001, implementation of the access fee to electronic court data and how that fee would be applied to litigants and infrequent users; (4) information on the institution of new public services and their related fees; (5) information on the AO electronic fee impact study; (6) the granting by the Court of an exemption to the 7 cents per page access fee; and (7) an extract from *The Third Branch* (Vol. 33, Number 4, April 2001) on public access to court documents.

## **2. Communication and Training Efforts**

### **a. AO Modification Requests Subcommittee Activity (*Dick Napoli and Sandra Heagle*)**

The Modification Requests (MR) Subcommittee of the Bankruptcy CM/ECF Working Group established by the AO met on May 8-9, 2001, at Washington, D.C. Judge Mitchell and Debbie Lowe attended the May 8 portion of the meeting. (A memorial service for the late Judge Blackwell N. Shelley was held in Richmond on May 9.) The purpose of the meeting was to recommend additional functionality needed for Version 2 (BV2) of CM/ECF. (Version 1 – BV1 – of CM/ECF did not incorporate some features currently available to courts using NIBS and BABCAP.) BV2 is scheduled to be released to the bankruptcy courts in spring 2002.

### **b. External Users' Training – Development of Users' Participant Guide and Status of Securing CLE Credit for Such Training (*Renee Paxton and Dick Napoli*)**

Renee Paxton advised that an ECF users' "Participants Guide" has been developed by the clerk's office, which will be used in conjunction with external user ECF training provided by the clerk's office. Dick Napoli noted that revisions to the "Participants Guide" are almost complete and should be in use shortly. Dick also advised that he is working with the Virginia State Bar to secure mandatory CLE credit for the external user ECF training offered by the clerk's office. He also noted that it is possible that any final approved CLE credit could be made retroactive to July of last year.

### **c. New Name and Format for ECF Newsletter (*Dick Napoli*)**

Dick advised that the clerk's office ACC Team collectively is editing the ECF Newsletter. The name of the newsletter has been changed to the *ECF Newsletter* to make it more identifiable to readers. The scope and content of the newsletter has been expanded. Suggestions for the newsletter are welcome.

**d. CY 2001 ECF Fairs (*Dick Napoli*)**

Dick Napoli discussed CY 2001 ECF Fairs in the EDVA. He noted that if the fairs were held this calendar year, they would be division-based with assistance requested from the UAG and the bankruptcy bar groups located in the EDVA. An October-November time frame is being contemplated. Bill noted comments made at the last UAG meeting wherein the benefit of holding such fairs may be enhanced if they took place after the Court made a formal decision about making the filing of petitions and other documents mandatory while ensuring fair and equitable access to the Court. Bill advised that it is not likely that any mandatory ECF filing decision by the Court would be made effective before CY 2002. There was general agreement that should this occur, the Bar would require sufficient advance notice to make necessary preparation including required training.

**3. Handout Materials (*at meeting sites*)**

In addition to the draft memorandum referenced in Agenda Item 1.c. above, a series of bar graphs showing ECF filings for April 2001 were provided to the ECF members. With 1,057 petitions filed in April, this represented the second month in a row where such filings exceeded 1,000 in number. **[Update:** ECF petition filings in May also exceeded 1,000 (1,049) and June petition filings just barely missed reaching the 1,000 mark (977).]

**4. Technical Questions**

An ECF member raised a concern about slowness in the filing of a pleading or attachment via the Internet in the ECF system. Barry Wells noted that high-volume usage at peak times over the Internet might cause some slowness that is beyond the judiciary's ability to control. Barry also noted that the Court would be receiving more robust ECF server equipment in fall 2001. In addition, Barry noted that degradation issues involving the judiciary's New Orleans firewall, which serves the EDVA and other districts, have been brought to the AO's attention. Sprint, which is under contract to the AO for tele- and data-communications services, also has been performing less than optimally. The AO is aware of this situation as well. **[Update:** The T-1 line from the New Orleans firewall to the EDVA has been upgraded from a fractional T-1 to a full T-1. The AO and Sprint are now aggressively seeking to make improvements that hopefully will reduce filing degradation. Users are cautioned to contact their ISPs to be sure that any degradation is not the result of ISP activity. Various COTS products are available for users to monitor Internet traffic routing. Windows 2000 is reported to have a "PING" utility for route/hop tracing purposes through the URL entering into the court's web site. The clerk's office is continuing to monitor this situation closely. The clerk's office should be advised when filing degradation occurs.]

## **5. Issues of Interest to UAG Members**

### **a. Helpful Hints from ECF Help Desk (*Sandra Heagle*)**

The ECF Help desk will continue to highlight various functionality features new to BV1 and how best for users to make use of those features. A “helpful hints” column is now appearing in the *ECF Newsletter*.

### **b. Case Open Data Upload Program Status (*Sandra Heagle*)**

Bill Redden noted that the case open data upload program is not a substitute for the batch filing function that had been present in the former prototype version of CM/ECF. Sandra Heagle provided background information on this program. When operational, this program should save petition filers considerable time in filing petitions. The program makes possible the uploading of data automatically into BV1 for electronic filing. **[Update:** Several petition software vendors have expressed a willingness to work with the clerk’s office in customizing their products to meet EDVA needs. Members of the Bar are encouraged to provide the clerk’s office with contact information of other vendors who would be willing to make their products compatible with the program.] Bill noted that the Court neither passes on the merit of the product of these vendors nor endorses or sponsors any such vendor. He also noted that the Court makes no representations and disclaims all express, implied, and statutory warranties of any kind to any party including warranties as to accuracy, timeliness, completeness, merchantability, or fitness of the products and/or services that are BV1 compliant.

### **c. Extending POC Filings to Non-Attorneys Status (*Sandra Heagle*)**

Several out-of-state law firms are filing proofs of claims via the Internet in the ECF system. The United States Internal Revenue Service and the Virginia Department of Taxation will receive training from the clerk’s office to file proofs of claims shortly. Sandra Heagle noted that entities interested in filing proofs of claims in this manner should contact the ECF Help Desk.

### **d. ECF Order Process Program Update (*Barry Wells*)**

Barry Wells provided an update on the ECF order process program under development by the clerk’s office. The case administration module has been completed and final work is underway on the Judges’ module. Several new features will be incorporated into the program resulting from suggestions made by the Judges at their May 21, 2001, meeting. Extensive internal testing within chambers and the clerk’s office will be underway soon followed by testing with volunteer attorneys.

## **6. Other Issues of Interest**

No additional issues of interest were raised at the meeting.

## **7. Next Meeting Date, Location(s) and Time**

It was agreed that the next UAG meeting would be scheduled for Tuesday, July 24, 2001. The meeting will be held via video teleconference, through Sprint, from 12:30 p.m. to 2:00 p.m., at the Court's Alexandria, Norfolk and Richmond facilities. UAG members are requested to provide Bill Redden with proposed agenda items, issues of interest and technical questions on a date to be determined later [July 16, 2001]. This will facilitate a review by court representatives of any submitted agenda items and technical questions prior to the next UAG meeting.

An agenda for the next meeting will be sent out by the clerk's office on a date to be determined later [by July 17, 2001].

The meeting adjourned at 2:15 p.m.

Respectfully submitted,

William C. Redden